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July 25, 2002

BY HAND
Marlene H. Dortch, Esquire
Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

RECEIVED

JUL 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 00-138
RM-9896
Boca Raton, Florida

Dear Ms. Dortch:

Transmitted herewith are an original and four copies of the "Petition for Leave to File Response and Response to Reply" submitted by Guenter Marksteiner, by counsel, in the above referenced proceeding.

Should any questions arise concerning this matter, please communicate with this office.

Very truly yours,

Vincent J. Curtis, Jr.
Counsel for Guenter Marksteiner

Enclosures
cc: Paul H. Brown, Esquire (with enclosure)

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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

RECEIVED

JUL 25 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.622(b),	)	MM DOCKET NO. 00-138
Table of Allotments,	)	RM-9896
Digital Television Broadcast Stations.	)	
(Boca Raton, Florida)	)	

Directed to: Chief, Video Division, Media Bureau

PETITION FOR LEAVE TO FILE RESPONSE AND RESPONSE TO REPLY

Guenter Marksteiner ("Marksteiner"), through counsel, hereby respectfully submit his Petition for Leave to File Response and Response to Reply in the above-captioned proceeding. With respect thereto, the following is stated:

1. The above-captioned proceeding concerns the substitution of DTV Channel *40 for Station WPPB-DT's, licensed to the School Board of Broward County, Florida ("Broward"), assigned DTV Channel *44, as approved by the Commission in its *Report and Order*, DA 02-893, released April 22, 2002, ("*R&O*"). On May 23, 2002, Sherjan Broadcasting Co., Inc. ("Sherjan"), submitted its "Petition for Reconsideration" with regard to the *R&O*. Broward and Marksteiner submitted their "Joint Opposition to Petition for Reconsideration" on June 21, 2002, and Sherjan submitted its "Reply" on July 3, 2002.

2. Sherjan has sought reconsideration of the *R&O* based upon its assertion that the proposed channel substitution of DTV Channel *40 for DTV Channel *44 will cause unacceptable interference to its Class A television station WJAN-CA, Miami, Florida, which

operates on Channel 41. Sherjan bases its claim on the recitation in the *R&O* that the channel change could cause interference to 1.03 percent of the WJAN-CA service area population. In their Joint Opposition, however, Broward and Marksteiner demonstrated that the channel substitution would cause interference to less than 0.5 percent of the WJAN-CA service area population. *See* "Joint Opposition to Petition for Reconsideration" at Engineering Statement. Accordingly, it is clear that the channel change adopted in the *R&O* will not cause prohibited new interference to the operations of WJAN-CA. In its "Reply," Sherjan claims that the engineering methodology used to demonstrate lack of interference represents a "new fact" which may not be considered at this stage. Sherjan's assertion is inaccurate, however. Accordingly, in order to correct the record, it is necessary to submit the instant Response.

3. In actuality, Broward and Marksteiner have introduced no "new facts" whatsoever. The fact demonstrated by Broward and Marksteiner in their Joint Opposition is that the channel exchange would cause interference to less than 0.5 percent of the WJAN-CA service area population. Broward and Marksteiner previously demonstrated precisely the same fact, *i.e.*, interference to less than 0.5 percent of the WJAN-CA service area population, in their "Joint Response to Supplemental Reply Comments" filed in the instant proceeding on December 21, 2000. Thus, the facts advanced by Broward and Marksteiner remain unchanged.[1]

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[1] In contrast, it should be noted that the "facts" asserted by Sherjan have changed significantly over the course of this proceeding. In its initial comments, filed October 10, 2000, Sherjan claimed interference to WJAN-CA of 64.9 percent of the land area and 80.7 percent of the population. In supplemental reply comments filed November 23, 2000, the claimed interference shrank to 6.9 percent of the land area and 15.2 percent of the population. Now, at the reconsideration stage, Sherjan is advancing the figure of 1.3 percent of the WJAN-CA service area population. This downward progression suggests that Sherjan's interference figures have been inflated throughout the course of this proceeding.

4. The methodology for demonstrating the same fact has changed somewhat, however. As set forth in the Engineering Statement attached to their Joint Opposition, this change was necessitated because of a change in the Commission's own interference calculation methods. It is only in response to the Commission's change in methodology that Broward and Marksteiner introduced new interference calculations. In the interim between December 2000, and the present time, the Commission adopted a new computer program to implement OET Bulletin 69, which yields somewhat different population figures, but shows very similar interference area locations. The Commission's revised calculation method creates inaccurate and inflated predicted interference figures in the instant case, however.

5. As previously explained, the anomaly here results from the fact that the program shows interference to a portion of one particular calculation area "cell" which has a large population. Accordingly, Broward and Marksteiner used a finer than normal resolution to achieve more accurate calculations. Sherjan now claims that the presence of a large population within one cell makes the use of smaller cell sizes somehow less accurate rather than more accurate. As set forth in the attached Engineering Statement, this assertion is erroneous.

6. As acknowledged by Sherjan, OET Bulletin 69 calculations assume that the entire population of a particular cell is located at its center. This assumption, however useful for calculation purposes, is obviously contrary to fact in virtually all instances. Breaking down a particular geographical area into smaller cells yields a greater number of such cells and more center points at which the population is presumed to live. As a result, the calculation can better consider the actual population distribution and better capture where the people actually do live. Therefore, the use of finer resolution necessarily yields more accurate results. Those results

demonstrate that the proposed channel change would result in new interference affecting only 0.42 percent of the WJAN-CA service area population. Clearly, this figure is within the 0.5 percent rounding tolerance used by the Commission.

WHEREFORE, the premises considered, Marksteiner respectfully requests that the instant Response to Reply be accepted and considered, that Sherjan's Petition for Reconsideration be denied, and that the *R&O* be affirmed.

Respectfully submitted,

GUENTER MARKSTEINER

By: _____

Frank R. Jazzo
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Anne Goodwin Crump

His Attorneys

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July 25, 2002

ENGINEERING STATEMENT
prepared for
Guenter Marksteiner
WPPB-DT Boca Raton, Florida
MM Docket 00-138

This engineering statement has been prepared on behalf of *Guenter Marksteiner*, in support of a *Petition for Leave to File Response and Response to Reply,* regarding a Report and Order ("Order") in Mass Media Docket 00-138.[1] The subject Order changed the paired digital television (DTV) assignment for WPPB-TV (NTSC Channel 63, Boca Raton, Florida) from DTV Channel 44 to DTV Channel 40, as requested by the prior licensee of WPPB-TV.

In its July 3, 2002 *Reply* to *Guenter Marksteiner's Joint Opposition to Petition for Reconsideration, Sherjan Broadcasting Co., Inc. ("Sherjan"),* licensee of Class A television station WJAN-CA (NTSC Channel 41, Miami, FL), suggests that use of a reduced OET Bulletin 69[2] cell size of 1 km provides questionable results.

In fact, the potential for error or misleading results is reduced when the cell size is reduced. Where a small area of interference area exists, it is simply more likely to be detected as the grid size is reduced, meaning that the number of prospective receive locations calculated increases. If a large cell size is employed, a small area of interference could easily be ignored if it falls within an otherwise "good" cell. Similarly, a large cell marked "interference" can erroneously imply that interference occurs within the entire cell, even though some portions will not receive interference.

Sherjan's reasoning that larger cell sizes are more appropriate does not make logical engineering sense, nor is it correct if accuracy is the goal. If this is true, one could divide up a television facility's service area into only a few blocks for analysis (for instance, a 20 km grid size might be attempted) and determine whether interference occurs over each block by the calculated signal levels at each block's population centroid. Since actual population is spread out within such

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[1] See *Amendment of Section 73.622(b), Table of Allotments, Digital Television Broadcast Stations (Boca Raton, Florida)*, MM Docket No. 00-138, RM 9896, Report and Order, released April 22, 2002.

[2] "OET Bulletin 69," as referenced herein, refers to the Commission's Office of Engineering and Technology Bulletin number 69, *Longley-Rice Methodology for Evaluating TV Coverage and Interference*, July 2, 1997.

a large block, any conclusion (of either interference or interference-free) would not be expected to represent actual circumstances over the entire block.

Accordingly, a 20 km grid size was not employed in the Commission's allotment process for digital television. The "default" grid size of 2 km and a terrain profile step size of 1 km was selected by Commission Staff to balance the goals of increasing the calculation accuracy and make reasonable the speed and complexity of the necessary computer processing.

The Commission permits the use of a finer resolution for OET Bulletin 69 studies, per the Public Notice[3] of August 10, 1998. Use of a 1 km cell size can only increase the accuracy of the OET Bulletin 69 results, when compared to the standard 2 km analysis. Certainly, if the use of a finer resolution was expected to have resulted in less accurate results, the Commission would not have contemplated its use.[4]

As a matter of record, the Commission has granted numerous DTV proposals under the interference criteria §73.623(c)(2) at 1 km cell size resolution. Many of these were submitted for 1 km analysis because they failed the standard 2 km analysis. For example, the licensed WCVB-DT (BLCDT-20020102AAH, Ch. 20, Boston, MA) facility's underlying construction permit was granted based on a 1 km analysis. WCVB-DT's application failed the *de minimis* limit towards WPXG(TV) (BPCT-19950215KF) when the standard 2 km processing was employed.

As an additional example, in MB Docket 02-92 the Commission is considering a channel change for WXXA-DT (BPRM-20000718AAA, Albany, NY). The *Notice of Proposed Rulemaking* for this channel change indicates the Commission's acceptance of the proposal under the interference criteria of §73.623(c)(2). The underlying *Petition for Rulemaking* specified a 1 km OET Bulletin 69

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[3] *"Additional Application Processing Guidelines for Digital Television (DTV)"*

[4] Sherjan's July 3, 2002 *Reply* suggested that the OET Bulletin 69 analysis terrain profile step size of 1 km (to consider terrain blockage) also limits the accuracy of the model. However, it should be noted that in the region of interest for the case at hand (Miami, FL), the terrain hardly varies, and the specific step size employed would not influence the study results.

analysis, as the proposal fails the *de minimis* limit towards WWNY-TV (BLCT-2160) with standard 2 km processing.

Additionally, *Sherjan* has an application pending before the Commission (BPTTA-20010116AGG) to modify WJAN-CA. The proposal relies on an OET Bulletin 69 analysis to show compliance with the Commission's protection requirements. In this application, *Sherjan's* OET Bulletin 69 analysis was performed employing a 1 km grid. One station analyzed in the *Sherjan* WJAN-CA application is an LPTV station, W46CI (APP, Ch. 41, Fort Pierce, FL). *Sherjan's* submission of and reliance on an OET Bulletin 69 based on a 1 km grid for its own WJAN-CA application contradicts its assertion in the instant proceeding that such 1 km analysis for LPTV or Class A facilities provides questionable results.

Conclusion

Use of a finer resolution cell size for an OET Bulletin 69 analysis provides more accurate results. The Commission has granted proposals based on a 1 km cell size where a 2 km analysis has failed, including the processing of a pending DTV channel change petition. *Sherjan's* pending application for WJAN-CA contains an OET Bulletin 69 analysis based on a 1 km cell size.

Certification

The undersigned hereby certifies that the foregoing statement was prepared by him or under his direction, and that it is true and correct to the best of his knowledge and belief. Mr. Davis is a principal in the firm of *Cavell, Mertz & Davis, Inc.*, is a Registered Professional Engineer in Virginia, holds a Bachelor of Science degree from Old Dominion University in Electrical Engineering Technology, and has submitted numerous engineering exhibits to various local

governmental authorities and the Federal Communications Commission. His qualifications are a matter of record with that entity.

Joseph M. Davis, P.E.
July 24, 2002

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CERTIFICATE OF SERVICE

I, Suzanne E. Thompson, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the"Petition for Leave to File Response and Response to Reply" was sent this 25th day of July 2002, postage prepaid, first class U.S. Mail, to the following:

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